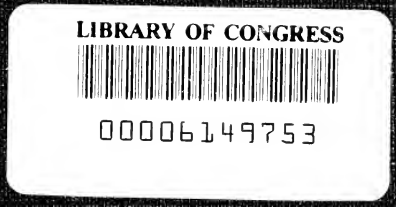

A FAIR ANSWER TO THE CONFEDERATE APPEAL AT RICHMOND

BY

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On Monday, June 3, 1907, a great memorial column, arch, and statue was unveiled at Richmond, Virginia, in honor of Jefferson Davis, the only president of the states that from February, 1861, to May, 1865, acted as "The Confederate States of America." The inscription upon this monument, and the speeches made, claim that God will vindicate the action of those states, and of President Davis, and express what is firmly believed by the great majority of the white inhabitants of those states.

The majority of the people of the present United States of America as firmly believe that, as God cannot give a wrong judgment, the facts that I will now briefly state will forever prevent by Him the vindication claimed by this memorial monument.

The states that seceded in 1860 and 1861 claimed as their justification: —

1. That the South had been wronged by the legislation as to the territory of the United States.

2. That it had been wronged by the failure to comply with and enforce the provision in the Constitution of the United States for the recovery of fugitive slaves.

3. That the existence of slavery, in the then slave states, was in imminent peril, because of the prevalence of anti-slavery opinions in the then free states.

4. That the Congress of the United States had failed to pass any laws regulating and protecting slavery in the territories.

5. That each state was sovereign, and had full right to secede at pleasure, and without cause.

6. That the people in the Free States were very strongly anti-slavery in opinion, and hostile to the South.

What were the actual facts as to each of said claims, up to and in 1860–1861?

The Facts as to Claim One

Every act of Congress as to any territory of the United States passed between March 4, 1789, and March 4, 1861, except that of 1798, organizing Mississippi as a territory, was approved by a president of the United States who was born in a slave state, was himself a slaveholder, and was popular in and approved by the South, except Presidents Van Buren, Fillmore, Pierce, and Buchanan. The acts passed during the administrations of said four Northern born presidents were approved by the South; Van Buren, Pierce, and Buchanan each received a large majority of the electoral votes of the South. The legislation in President Fillmore's time — the Compromise of 1850 — was approved by the great majority of the representatives of the slave states in the Democratic and Whig national conventions of the year 1852.

From September 9, 1850, until after July 4, 1861, any slaveholder who wished to do so, could take and hold his slaves in any part of the territory organized in 1850 as Utah and New Mexico. This embraced all of what is now Nevada, Utah, Arizona, and New Mexico, also the western half of what is now Colorado, and the southwestern part of what is now Wyoming.

According to the census taken in June, 1860, there were then no slaves in New Mexico, and only 29 in Utah.

This indicated that the South did not intend or expect the establishment of any slave states in either.

From May 31, 1854, until 1861, any slaveholder could lawfully take and hold his slaves in any territory in the land ceded by France to the United States, east of the Rocky Mountains, except so much of what is now North and South Dakota as lies east of the Missouri River. The census taken in June, 1860, showed that within said territory, between the Rocky Mountains and the Missouri River, there were then only 17 slaves, 15 of whom were in Nebraska, and the other 2 in Kansas.

This indicated that the South did not, in 1860, intend or expect the establishment of any slave states in that territory. The legislation that, during those years, made slavery illegal in so much of the Dakotas as lies east of the Missouri River, and in what is now Idaho and Washington, and so much of Montana as lies west of the Rocky Mountains, was enacted during the administration of President Polk, of Tennessee, and approved by him; to wit, the acts organizing Oregon and Minnesota. Those territories lay so far north and were so distant from the nearest slave state that the South never intended or expected the creation of any slave state therein.

Every act of Congress admitting any state, between March 4, 1789, and July 4, 1861, was approved by a president, born, reared, and resident in a slave state, and himself a slaveholder, or by one of the four Northern born presidents hereinbefore named, who — as I have stated — were elected, or their action on such legislation approved, by the South. Under these facts, claim One is without merit.

The Facts as to Claim Two

The third clause of section two of article four of the Constitution of the United States reads thus: —

"No person held to service or labour in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due."

In 1842, in the case of Prigg *vs.* Pennsylvania, 16 Howard's Reports, pages 540 and following, the Supreme Court of the United States decided unanimously that this clause gave to Congress the power, and made it its duty, to enforce such delivery of a fugitive slave by appropriate legislation and by national officers. A minority of the court held that any state legislature also had power to aid in enforcing delivery.

Congress in 1793 passed an act under this power and duty. Before 1850 this act was found defective, and one prepared by Senator James M. Mason, of Virginia, was passed by both houses and approved by President Fillmore. It was claimed, in a number of the free states, that some of the provisions of this act of 1850 were unconstitutional and wrongfully imposed illegal duties and penalties upon citizens and residents of said states. A number of free state legislatures passed state statutes, commonly known as "personal liberty bills," purporting to protect residents of said states from said duties and penalties, and to punish any illegal acts done under said fugitive slave law. Cases arising under said state legislation were duly carried to the Supreme Court of the United States,

which held that the "personal liberty bills" in a number of said states — four — were unconstitutional and invalid. The last decision to that effect was made at December term, 1858, in the case of Ableman *vs.* Booth, 21 Howard's Reports, pages 506 and following. The Supreme Court of the United States unanimously held that the entire fugitive slave law of 1850 was constitutional, that the personal liberty bill of Wisconsin was unconstitutional; and the judgment of the Wisconsin court in favor of Booth was reversed. Booth was thereafter convicted, sentenced, and punished for a violation of the fugitive slave law of 1850. In May, 1859, the Supreme Court of Ohio, composed of Republican judges, followed this precedent; and some residents of Lorain County, Ohio, were punished, under a judgment rendered by the United States Court at Cleveland, for acts done in violation of said fugitive slave law. From the time of the passage of said law, in 1850, until after secession, each president of the United States, and his subordinates charged with the enforcement of the laws, were active, diligent, and persistent in enforcing said fugitive slave law; and the United States Courts everywhere did their duty in all cases brought before them, so faithfully that no complaint was made against any president, judge, or any legal or other United States official by the South. The census taken in June, 1860, showed that the number of slaves then within the United States, exceeded the number reported by the census of 1850, by about 500,000. Yet the number of escaped fugitive slaves in 1860 was 110 less than the number of escaped slaves in 1850.

After the Supreme Court of the United States, at December term, 1858, had unanimously decided that the entire law of 1850 was constitutional, no state court

upheld any of the personal liberty bills that the Supreme Court's decision had shown to be unconstitutional.

The United States Congress, the president, the executive departments, and the judiciary had actively, fearlessly, and efficiently discharged the duty, and used the power, imposed and given by the Constitution, under what is known as "the fugitive slave clause."

In the discussions in Congress in December, January, and February, 1860–61, and in the conference of delegates from states convened at Washington City in February, 1861, on the invitation of Virginia, the foregoing facts were retold in speeches by free state men, and they urged that Congress might, and would, if secession did not continue, provide by suitable legislation that escaped slaves, who could not be arrested and delivered up, might be paid for by the United States Government. Southern representatives gave no indication that such legislation would affect their claim under what I have called "Number Two."

In his speech at Jonesboro, Illinois, on September 15, 1858, Mr. Lincoln (there debating with Senator Douglas) said, "Now on what ground would a member of Congress, who is opposed to slavery in the abstract, vote for a fugitive slave law, as I would deem it my *duty* to do? Because there is a constitutional right which needs legislation to enforce it, and, although it is distasteful to me, I have sworn to support the Constitution, and having so sworn, I cannot conceive that I do support it if I withhold from that right any necessary legislation to make it practical." See the volume of the Lincoln-Douglas Debates, in 1858, page 155. This speech was published and read everywhere at the North for two years. By their nomination and election of Mr. Lincoln in 1860, the Republican party

endorsed his opinion. This speech was known to and quoted in the Senate by Senator Benjamin, of Louisiana. It was also known to other Southern congressmen. They knew, in 1860–61, that the newly elected president was thus publicly pledged to enforce effectively the fugitive slave law.

Under these facts, the Southern claim Two was and is without merit or value.

The Facts as to Claim Three

Between 1830 and 1842, abolition societies were formed in many of the free states, abolition newspapers, pamphlets, tracts, addresses, and sermons were widely published and circulated, and abolition petitions were sent to both houses of Congress at each session. In 1840, members of said societies nominated James G. Birney for president of the United States, and voted for him in November of that year. They did the like in 1844. He received 7059 votes in 1840; the total vote that year was 2,410,778. He received 62,300 votes in 1844; the total vote that year was 2,698,611. Salmon P. Chase and others, who were opposed to the extension of slavery into free territory, but held that the United States had no constitutional power to abolish slavery in a state, induced those anti-slavery men, who would no longer act with either the Whig or the Democratic Party, to organize in 1848 as the "Free-Soil Party." The friends of Martin Van Buren, in order to punish Cass, joined the new party at Buffalo, and in November, 1848, it cast 291,263 votes for Van Buren. In 1852, the same party cast for John P. Hale 156,149 votes; the total vote that year was 3,139,869. In that year both the Democratic and Whig national conventions

resolved to approve and maintain "the compromise measures of 1850" and to resist any attempt "to reopen the slavery question, come from what quarter it may." Franklin Pierce, born in New Hampshire, nominated through and by special efforts of Southern politicians, and holding the political opinions of John C. Calhoun, received *all* electoral votes except the 42 given by Massachusetts, Vermont, Kentucky, and Tennessee to General Winfield Scott, of Virginia. Thus the efforts of abolition societies, which had kept the South excited for twenty-two years, resulted in a vote of only 156,149 men, *not* for abolition, but against the *extension* of slavery into free territory; and 2,983,720 votes to maintain the "Compromise of 1850" and *against* any reopening of the slavery question. This seems to prove that the vast majority of the people of the North did not, in 1852, *hate* the South. They placed in the presidential chair a man holding strongly Southern opinions, and gave him a Congress ready to support him by a very large majority in each house.

While only 156,149 men in 1852 voted, *in a separate party*, against the *extension* of slavery into free territory, the vast majority of the people of the free states believed, as did George Mason, who was one of Virginia's delegates to the Constitutional Convention of 1787, — "George Mason of Gunston Hall."

In Volume II of Bancroft's History of the Constitution, on pages 153 and 154, I find that said Mason of Gunston Hall, in a speech made in said constitutional convention, said, —

"Slavery discourages art and manufactures. The poor despise labor when performed by slaves. They prevent the emigration of whites, who really enrich and strengthen a country. They produce the most pernicious

effect upon manners. Every master of slaves is born a petty tyrant. They bring the judgment of Heaven on a country. As nations cannot be rewarded or punished in the next world, they must be in this. By an inevitable chain of causes and effects, Providence punishes national sins by national calamities. *I hold it essential in every point of view that the general government should have* the power to prevent the increase of slavery."

The second paragraph of section three, article four, of the Constitution of the United States contains this provision: "The Congress shall have power to dispose of and *make all needful rules and regulations respecting the territory or other property belonging to the United States.*"

On March 6, 1820, Congress passed the act well known as the "Compromise of 1820." It prohibited slavery in all the territory ceded by France that lay north of north latitude 36° 30′, except in the state of Missouri. This act was at once submitted to President James Monroe, of Virginia. He called his cabinet together and submitted to them this question: "Is the section prohibiting slavery in said portion of said ceded territory constitutional?" His cabinet consisted of John Quincy Adams, of Massachusetts, Secretary of State, William H. Crawford, of Georgia, Secretary of the Treasury, John C. Calhoun, of South Carolina, Secretary of War, and William Wirt, of Virginia, Attorney-General. They unanimously advised the president that in their opinion the prohibition was constitutional and valid, so long as the land continued to be "territory;" but Crawford, Calhoun, and Wirt held that when admitted as a state, the state might, if it so pleased, legalize slavery in the state; so Mr. Monroe signed the bill and it became a law.

In 1850, this law had been in force for thirty years, and was well known and valued by the North as almost a part of the Constitution. Notwithstanding the long and excited contest in Congress, during that year, no attempt was made to alter, amend, or repeal it. None of the acts of Congress that became known as the "Compromise of 1850" contained one word relating to, or affecting, any part of the territory ceded by France and controlled by the "Compromise of 1820."

The North, in both the Democratic and Whig national conventions of 1852, understanding and believing that the act of 1820 made secure for freedom all of the French cession north of 36° 30′, joined heartily in the pledges "to maintain the Compromise of 1850" (the only one that was then opposed by extremists in both North and South) and "to resist the reopening of the slavery question, come from what quarter it may."

Senator Douglas reopened the slavery question in January, 1854, by first attempting to make "null," and later to repeal, the Compromise of 1820. In this he was supported by the South, and by President Pierce; and the repeal took effect on May 31, 1854. This surprised and shocked vast numbers of anti-slavery men, who thought like George Mason, but had hitherto voted as regular members of either the Whig or Democratic Party, and they resolved to so vote in the future as to prevent the extension of slavery into free territory. In 1856, John C. Frémont was nominated for president on that platform, and he received a popular vote of 1,341,264, almost all cast in the 16 free states, a small number, aggregating less than 10,000, in some border slave states. This was only 49,312 less than General Scott had received in 1852, in the 31 states. This was no "growth of an abolition party."

It was the same "Mason of Gunston Hall" anti-slavery opinion that, in 1820, had dedicated to freedom all of the French cession north of 36° 30′. It was not "hate of the South;" it was the same resolve to prevent "the *extension* of slavery" that George Mason was governed by.

In 1860, in April at Charleston and later in Congress, the South insisted that Congress must pass national laws protecting slavery in the territories of the United States. Seventy-one years, for forty-one of which slave-holding presidents were in the executive chair, had passed, during which no such claim had been made. Because of this claim, voters in New Jersey, Pennsylvania, Indiana, and Illinois, who, by remaining in the Democratic Party had given to Mr. Buchanan the electoral votes of those states and made him president, in 1860 voted for Mr. Lincoln and made his total popular vote 1,866,352. This exceeded the vote of 1856 for Mr. Buchanan by 28,183, although no votes were cast for Mr. Lincoln in ten of the slave states, all of which were carried in 1856 by Mr. Buchanan.

The platform upon which Mr. Lincoln was nominated and elected, limited the party's proposed action against slavery to the prevention of its extension into any free territory.

Before Congress adjourned on March 4, 1861, by a vote of two thirds of each house it passed a joint resolution proposing to the states an amendment to the Constitution of the United States to read thus: —

"Article XIII. No amendment shall be made to the Constitution which will authorize or give Congress the power to abolish or interfere, within any state, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said state."

On May 13, 1861, the legislature of Ohio, largely Republican in both houses, duly ratified said amendment.

The same legislature, in April, 1861, had authorized the organization of twenty-two regiments of infantry and also some cavalry and artillery, under President Lincoln's proclamation of April 15, for the purpose of aiding the president in executing the laws of the United States. If the Southern states, as they had ample time, had ratified said amendment in April or May, 1861, the existence of slavery in the then slave states would have been made secure beyond peradventure. The secession conventions of the Gulf States and South Carolina could have repealed their ordinances before Beauregard fired on Sumter, and the said thirteenth amendment could have been ratified, so that the members of Senate and House, to which they were entitled, might take their seats in Congress. Each house would then have contained a majority opposed to the Republican Party, and there would have been no war.

President Lincoln was inaugurated on March 4, 1861. In his inaugural address on that day, he said, "I have no purpose, directly or indirectly, to interfere with the institution of slavery in the states where it exists. I believe I have no lawful right to do so, and I have no inclination to do so. Those who nominated and elected me did so with full knowledge that I made this and many similar declarations and had never recanted them; and more than this, they placed in the platform for my acceptance, and as a law to themselves and to me, the clear and emphatic resolution which I now read: —

"Resolved, That the maintenance inviolate of the rights of the states, and especially the rights of each

state to order and control its own domestic institutions according to its own judgment exclusively, is essential to that balance of power on which the perfection and endurance of our political fabric depend."

The president repeated his opinion and statement as to his duty under the fugitive slave law, and plainly made known his intent to maintain the Constitution and laws of the United States in full force throughout all the states, secession being illegal and void. All laws of the United States then in force had been enacted or were approved by a majority of Southern congressmen, except the Morrill tariff law. That was passed after the members from South Carolina and the Gulf States had withdrawn. It could not have been passed if they had retained their seats. Its amendment or repeal could be accomplished by the presence of *all* slave-state congressmen in their seats, as both houses would then have contained a majority of members opposed to a protective tariff.

It is evident that "the existence of slavery in the then slave states" was then in no peril, unless they should persist in secession and force a war.

The Facts as to Claim Four

I have already quoted George Mason's argument, that it was essential that "the general government should have power to prevent the increase of slavery," and also the words by which the Constitution granted to Congress power "to pass all needful regulations for the territory of the United States."

Prior to March 4, 1798, the United States were a league described in the preface to the "Articles of Confederation" thus: —

"Articles of Confederation and perpetual union between the states of New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania,. Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia."

By virtue of the Constitution framed in 1787 and ratified in 1787 and 1788, the United States became what that instrument made them. The preamble, taking the place of the "Preface" above quoted, read thus: —

"*We, the people of the United States,* in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, *do ordain and establish* this Constitution for the United States of America." (The italics are mine.)

In the Constitutional Convention, while it was framing this Constitution, a Virginia delegate moved the following: "A national judiciary ought to be established with jurisdiction to hear and determine cases in which foreigners and citizens, a citizen of one state and a citizen of another state, may be interested, cases which respect the collection of the national revenue, impeachments of national officers, *and questions which may involve the national peace and harmony.*"

The convention made section two, of article three, of the Constitution read thus: —

"The judicial power shall extend to *all* cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting

ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states; and between a state, or citizens thereof, and foreign states, citizens, or subjects."

The second paragraph of article four reads thus:—

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under authority of the United States shall be the supreme law of the land, and the judges of every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

The Supreme Court of the United States made decisions construing the Constitution as to its effect upon the respective powers of the general government and of the states in the following cases: Martin *v.* Hunter, 1 Wheaton, 304, A. D. 1816; McCulloch *v.* Maryland, 4 Wheaton, 316, 403, A.D. 1819; Gibbons *v.* Ogden, 9 Wheaton, 187, A. D. 1824. I quote from the court's opinions as follows: —

"The Constitution of the United States was ordained and established, not by the states in their sovereign capacities, but (as the preamble of the Constitution declares) by the people of the United States."

"The Constitution of the United States is to be regarded as emanating, not from the states as governments, but directly from the people. The convention which framed the Constitution was indeed elected by the state legislatures, but the instrument when it

came from the hands of the convention, was a mere proposal, without obligations or pretentions to it. It was then submitted to the people. They acted upon it in the only manner in which they can act effectively and wisely on such a subject, by assembling in conventions. These conventions necessarily assembled in their respective states, but their action did not, on that account, cease to be the action of the people themselves, or become the action of the state governments."

"Notwithstanding the people had previously created state governments, they had the power to organize a distinct and independent government over the whole union.

"It is true that, anterior to the formation of the government of the United States, the separate states were sovereign, independent, and connected only by a league; but when they converted their league into a government, when they converted their congress of ambassadors into a legislature, the whole character in which the states appear underwent a change, the extent of which must be determined by a fair consideration of the instrument by which that change was effected."

Chief Justice Marshall, of Virginia, presided in all these cases, and my quotations are from his statement of opinion in each case.

None of said cases has ever been overruled by the Supreme Court of the United States. Two of them were decided before 1820, and under them President Monroe and Secretaries Calhoun, Crawford, and Attorney-General Wirt all decided that the act of 1820, by which Congress prohibited slavery in 900,000 square miles of United States territory, was constitutional.

In 1790, North Carolina deeded what is now Ten-

nessee to the United States, and in 1802, Georgia deeded what is now almost the whole of Alabama and Mississippi. Evidently each state then believed that Congress could forbid slavery in *the* United States territory. North Carolina put in her deed, as a condition of her conveyance, the words, "Provided that no regulation made or to be made by Congress shall tend to emancipate slaves." Georgia's deed carefully provided against any such regulation as to her cession.

From 1789 to 1854, the action of presidents, of Congress, and of the judiciary also, conformed to said decisions, and in the belief that Congress had full power to prohibit slavery in United States territory. Washington, Jefferson, Madison, Monroe, Jackson, and Polk, all Southern born, bred, and resident, and all slaveholders, had approved and signed laws of Congress prohibiting slavery in territory of the United States.

In 1856, in the case of Dred Scott *vs.* Sanford, a majority of the then United States Supreme Court held that Dred Scott was not a citizen of the United States, and therefore could not sue in a United States Court, and designated Justice Nelson to announce the dismissal of the case, because the court did not have jurisdiction to hear and determine its issues.

Before dismissal was announced, the majority of the court caused it to be reargued, and in March, 1857, Chief Justice Taney and Justices Wayne, Daniel, Grier, and Campbell held that Congress had no power to prohibit slavery in any territory of the United States acquired after 1789; Justice Catron, of Tennessee, held that because of certain words in the French treaty slavery could not be prohibited in 1820 in the French cession; Justice Nelson gave no opinion on that point; and Justices McLean and Curtis held strongly

and ably that Congress had full power to so prohibit. Inasmuch as the court did not have jurisdiction to hear and decide any question in said case, except to hold that it must dismiss it for want of jurisdiction, the opinions of Chief Justice Taney and of Justices Wayne, Daniel, Grier, and Campbell were not entitled to respect as "judgments of the court;" they could only be regarded and heeded as opinions of five able lawyers. The decisions of the whole court made in 1816, 1819, and 1824 continued in full force and weight; and they held, as to the nature and construction of the Constitution, the direct opposite of the conclusions of Taney and his four associates.

Because of their *obiter dicta* in the Dred Scott case, Senator Jefferson Davis and other leading Southerners first began to claim that Congress must legislate so as to protect slavery in all territory of the United States so long as it remained "territory," in all cases where the territorial government should fail, or refuse, to provide the necessary remedies to insure adequate protection to and for slave property within its jurisdiction.

In April, 1860, the Democratic national convention met at Charleston, South Carolina. The South asked it to place in its platform the substance of Senator Davis's said claim, and a majority of the committee reported a platform worded as asked by the South. On April 30, the convention, by a vote of 165 to 138, amended the platform by substituting for the endorsement of Senator Davis's claim, the following words: —

"Resolved, that all questions in regard to the rights of property in states and territories arising under the Constitution of the United States are judicial in their character, and the Democratic Party is pledged to

abide by, and faithfully carry out, such determination of these questions as has been made, or may be made, by the Supreme Court of the United States."

At that date, the Supreme Court consisted of eight Democrats, five of whom were Southern residents, and one Republican. Chief Justice Taney, and Justices Wayne, Catron, Daniel, Grier, Nelson, Campbell, and McLean were still members of the Supreme Court, and Justice Clifford, a Democrat, had taken the place of Justice Curtis, a Whig, who had resigned. Each could hold for life.

At that date, "the territory of the United States" consisted of the following parcels, to wit: —

First. About 495,270 square miles ceded by Mexico and organized as New Mexico and Utah. Ever since September 9, 1850, any slaveholder could hold slaves in said territories, and a New Mexican legislature had enacted a law for their protection; but owing to their location, climate, and soil, slaveholders had been unwilling to take slaves there, and, as shown by the census of 1860, taken in June, there were no slaves in New Mexico, and only twenty-nine in Utah, where, at Camp Douglas and vicinity, Southern army officers were on duty.

Second. About 434,580 square miles then organized as the territories of Kansas and Nebraska. Ever since May 31, 1854, any slaveholder could hold slaves in said territories. From April, 1855, to 1858, a territorial slave code copied from the Missouri statute book had been in force in Kansas. On August 2, 1858, under a law voted for by a majority of Southern senators and representatives in Congress, an election was held in Kansas, at which the Free State Party cast 11,300 votes and the Pro-Slavery Party only 1788. From that date

the South gave up the attempt to establish a slave state in Kansas. The census of June, 1860, showed only two slaves in Kansas and fifteen in Nebraska. The South never hoped or expected to establish slavery in Nebraska. It was too far north.

Third. About 260,000 square miles then in that part of Minnesota Territory not included in the state, and in Washington Territory (this is now distributed in the Dakotas, Montana, Idaho, and Washington). Slavery was prohibited in this territory under statutes organizing Minnesota and Oregon territories under President Polk. It was all so far north and so distant from the nearest slave state that the South did not hope or expect the establishment of slavery in any of it. There were no slaves within it in 1860, unless Southern army officers on duty had their servants with them.

Fourth. About 71,000 square miles in what was then Indian Territory, land set apart for the Indian tribes therein located. None of it was then open to white settlement. Slavery existed there and had done so from time prior to 1820, and was fully protected by local legislation.

While the Charleston convention was in session, the United States did not own a single square mile of land in which the South hoped, expected, or could possibly establish a slave state, and only 46 slaves (29 in Utah, 15 in Nebraska, and 2 in Kansas, all or nearly all of them servants of Southern army officers on duty at United States posts) were in the territories of the United States that were then open to white settlement.

No petition had been presented in either house of Congress asking for legislation to protect slavery in

any territory. No bill had been introduced in either house of Congress for a law to protect slaveholders' property in any territory.

The subject had only been presented by Senator Jefferson Davis in the shape of declaratory resolutions as to the duty of Congress.

It would seem that, under these facts, the amendment made to the platform, by the vote in the convention on April 30, 1860, was ample for the safety of the South, and offered to it all that could rightly be asked for. There then existed no demand by, or need for, a Congressional slave code on the part of any slaveholders in any territory.

Because the convention so amended said platform, the delegates from South Carolina, Florida, Alabama, Mississippi, Louisiana, Texas, and Arkansas withdrew from the convention. The Democratic Party was so divided that a Republican president was elected on November 6, 1860, and secession followed.

Will any intelligent, fair-minded man think that Claim Four had or has any value or merit?

The Facts Under Claim Five

On the 26th day of June, 1788, the convention of the State of Virginia ratified the Constitution of the United States and accompanied that ratification by the following words in one of the resolutions then adopted by said convention, to wit: —

"We, the delegates of the people of Virginia, do in the name and on behalf of the people of Virginia, declare and make known that the powers granted under the Constitution being derived from the people of the United States, may be resumed by them *when-*

soever the same shall be perverted to their injury or oppression."

Virginia's great statesmen, of 1788, well understood that Madison was right when he declared that the ratification of the Constitution must be so absolute that it could not be repealed and made null except for good cause; for such cause as the Declaration of Independence, written by Jefferson and adopted on July 4, 1776, had stated would justify a change of government. These words of the Virginia convention truly stated the only ground upon which any state could repeal its ratification of the Constitution, or secede from the Union. No state had any right to so repeal, or secede, merely because its people wished to do so.

The Declaration of Independence, of July 4, 1776, written by Thomas Jefferson, of Virginia, stated the same doctrine thus: —

"We hold it to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness, that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that *whenever any form of government becomes destructive of these rights*, it is the right of the people to alter or abolish it and to institute a new government."

The Supreme Court decisions announced in the words of Chief Justice John Marshall, the great Virginian, hereinbefore quoted by me, held that the Constitution had so changed the nature of our union, that it was no longer a league; that no state was sovereign, as it had been before it ratified the Constitution; that the United States was made by the Constitution a national

government, entitled to maintain its powers as granted by that Constitution. Therefore, no state had any right to secede in 1860–61, because no cause justifying it existed.

The Facts Under Claim Six

The utmost activity of abolition societies from 1830 to November, 1852 (22 years), resulted in a vote of only 156,149 for John P. Hale and against the extension of slavery into free territory. On the same day, 2,983,720 votes were cast by the Whig and Democratic parties, in favor of the pledges of that year to maintain the "Compromise of 1850" and to oppose "the reopening of the slavery question, come from what quarter it may." Less than half of the 156,149 votes for Hale were cast by men who favored action by the national government interfering with slavery in any state. As the Hale Free State platform did not favor such action, and only demanded prohibition of slavery in the territories, that fact shows that "abolitionists" were not the majority in the Free-Soil Party. If the abolition party could not, after twenty-two years of active work, cast more than 78,080 votes out of 3,139,869, in how many years could they be expected to so control the national government as to interfere with slavery in any state?

On November 6, 1860, 1,866,352 men voted for Mr. Lincoln, knowing that he believed it to be his duty (and had declared in public speeches that he would do that duty) to aid in enforcing an effective fugitive slave law, and that the national government had no power to interfere with slavery in any state, knowing also that the platform of his party (the Republican Party) contained a resolution denying that the national govern-

ment had any such power, and asserting that *the rights of each state* must be preserved; while slavery *in the territories* should be prohibited. No abolitionist believed in said doctrines; those who voted for Mr. Lincoln could not truly or rightly be called "abolitionists," because of that vote. Fully three fourths of the 1,866,352 men who voted for Mr. Lincoln in 1860 had, in the Whig and Democratic parties, voted with the South in 1852, to support the pledges of that year. They would have continued to so vote in said parties, with the South, in support of said pledges, if the South had not, in 1854, "reopened the slavery question" by repealing the Compromise of 1820. The vast majority of the people of the North, in 1860, held, as to slavery, the same opinion that George Mason of Gunston Hall, as one of Virginia's delegates in the Constitutional Convention of 1787, had supported and earnestly urged. I have quoted them in my statement of "the facts as to Claim Three."

The same people continued to hold the same opinions as to slavery that, in March, 1820, controlled both houses of the Congress of that year, and caused the passage of the "Compromise of 1820," which President James Monroe, of Virginia, approved and signed, and which William Wirt, of Virginia, John C. Calhoun, of South Carolina, and William H. Crawford, of Georgia (all able lawyers), all born, reared, and resident in slaveholding states, pronounced constitutional.

It would seem, therefore, that the anti-slavery opinions of a majority of the people of the free states, in November, 1860, which were identical with those of George Mason (who in 1860 was still revered as having been one of Virginia's best and ablest men), and in favor of a pro-

hibition of slavery in the territories of the United States, which President Monroe and his cabinet (four fifths Southern born and resident) had held constitutional, under rulings of the Supreme Court as to the powers of the general government, furnished no cause to expect or apprehend any national legislation interfering with "the domestic institutions of any state," and no cause for secession.

Was not claim Six without value or merit?

The Situation in December, 1860, when South Carolina seceded

Abraham Lincoln, pledged to uphold the right of the South, under the Constitution, to an effective fugitive slave law, elected by a party whose platform, approved by him, denied that the general government had any power to interfere with the domestic institutions of any state, had received a majority of the electoral vote for the four years to begin with March 4, 1861.

In the Senate of the United States, there was then a majority of Democratic and Southern senators so large that, if no state should secede, the slaveholding senators could, during Mr. Lincoln's entire term, control the Democratic Senate Caucus and the Senate committees. In such case, no officer nominated by President Lincoln could be confirmed if objectionable to the South, and no bill objectionable to the South could become a law, because the Senate majority would not vote for it.

The election of November 6, 1860, made certain that, if no state should secede, there would be in the House of Representatives, for the term to begin with March 4, 1861, a majority of from five to eight against

the Republican Party. No law objectionable to the South could possibly be enacted by the Congress of 1861–1863.

In December, 1860, there was no law of the United States in force to which the South objected. If no state should secede, no law objectionable to the South could be passed by the Congress of 1859–1861.

If no state should secede, the south and its domestic institutions were absolutely and beyond peradventure safe.

The Situation when General Beauregard attacked Fort Sumter

Sumter was a fort built by the general government, on ground under water, ceded by South Carolina. In it were Major Anderson and eighty-three officers and men of the First Regiment of U. S. Artillery, and forty workmen employed by Captain Foster of the Engineers. Secession forces, aggregating at least 4000 officers and men, manned and supported the forts and batteries surrounding and bearing upon Sumter. On Monday afternoon, April 8, 1861, two messengers, sent by President Lincoln, presented themselves to Governor Pickens of South Carolina, and one of them read to him the following words: —

"I am directed by the President of the United States to notify you to expect an attempt will be made to supply Fort Sumter with provisions only; and that, if such attempt be not resisted, no effort to throw in arms, or ammunition, will be made without further notice, or in case of an attack on the fort."

General Beauregard, on the same evening, was informed of said notice. It was telegraphed to Montgomery, Alabama, and the Confederate executive ordered

General Beauregard to capture Fort Sumter. His bombardment began at half-past four o'clock on the morning of Friday, April 12th. At that hour, the only United States vessels within twelve miles of Charleston were the ex-revenue cutter Harriet Lane, carrying one gun, and the transport steamer Baltic, with no guns. The latter had arrived at three o'clock that morning, during a gale. At seven o'clock that morning the steam sloop of war Pawnee arrived and anchored "twelve miles east of the light," to await the arrival of the frigate Powhatan. As that vessel had been sent to Fort Pickens in the Gulf of Mexico, it did not arrive before Charleston. The transport steamer Baltic "stood in," to execute orders, by offering in the first place to carry provisions to Sumter. Nearing the bar, it was observed that war had commenced, and therefore the peaceful offer of provisions was not made.

See Report of Captain G. V. Fox, dated April 19, 1861, on page 11 of Volume I, Series 1, "Official Records of the Union and Confederate Armies, War of the Rebellion."

The fort was evacuated by Major Anderson and his garrison, on Sunday, April 14th, and General Beauregard held it.

At that time no law of the United States was in force to which the South had objected. After the senators from seven states had withdrawn, the Morrill Tariff Bill had been passed, and was approved by President Buchanan. If said senators had remained in their seats, it could not have been passed. If the seven seceded states had taken advantage of the twenty days given by President Lincoln's proclamation of April 15, 1861, repealed their acts of secession, disbanded their troops, and instructed their senators and representatives to

attend the session of Congress called to meet on the Fourth of July, 1861, there would have been a majority in each house opposed to the Republican Party, and the Morrill tariff law could have been repealed or modified to suit the South within a brief period.

At the moment when the order to General Beauregard to capture Fort Sumter was made, at Montgomery, Alabama, a constitutional amendment providing that the general government should never be given power to alter or interfere with "the domestic institutions, including slavery, in any state," was pending before the states. If secession should be abandoned, it was then certain that California, Oregon, Iowa, Illinois, Indiana, Ohio, Pennsylvania, New Jersey, New York, Connecticut, and Rhode Island, with the 15 slave states, would make 26 ratifying states, while 24 would make it valid, *and* Minnesota, Wisconsin, and Michigan would probably make 29. This, without war, would have made all Southern institutions and slavery permanently safe.

As no attempt had been made or proposed by President Lincoln or by his party, to "pervert any of the powers of the Constitution to the injury or oppression of any Southern state;" as the acts organizing the territories of Dakota, Colorado, and Nevada, which had been passed by Congress after the seceding senators had withdrawn, did not contain any words prohibiting slavery in either territory, each of the acts of secession was inoperative and void beyond a peradventure; all of the residents in said states were bound to obey said proclamation; no state officer had any right or legal power to oppose or prevent their obedience to it; the so-called confederate government had no legal existence or power; the United

States had, WITHIN EVERY STATE, as full jurisdiction to enforce national law as the state had in order to enforce its own laws; the presence or movements of United States troops within any state, for the purpose of enforcing obedience to the laws of the United States, was no invasion of such state. The full enforcement of President Lincoln's proclamation of April15, 1861, would not have perverted any power granted by the Constitution, to the injury or oppression of the people of any state. The president issued that proclamation under an act of Congress passed during the administration of George Washington, defining how, under such a state of facts as existed on April 15, 1861, the president should obey section three of article two of the Constitution, which reads, "He shall take care that the laws be faithfully executed." As I have already stated, there was then in force no law of the United States which the South had not aided in passing or for years fully acquiesced in, except acts organizing Dakota, Colorado, and Nevada, and the Morrill tariff act, which the willful absence of Southern senators had permitted to pass. The South approved said territorial acts of 1861. If secession should be abandoned, as required by said proclamation, the Morrill tariff act could soon have been repealed by the aid of Southern senators and congressmen.

Under the then existing facts, the persistence in maintaining secession and a Confederate government was unquestionably without excuse or justification.

The vast majority of the Southern people were ignorant of the facts. If they had known and understood them, they, by their own action, would have prevented secession. The votes and action of Virginia, North Carolina, Tennessee, Arkansas, Missouri, Ken-

tucky, Maryland, and Delaware, prior to July, 1861, proved that more than two thirds of the South was opposed to secession until after April 15, 1861. The four that later seceded did so because they believed that each state could secede at pleasure, and the nation had no right to enforce its laws in any of the seven seceded states. Men determined to accomplish secession well knew that if a conference, or convention, of the slaveholding states should be called, in November, 1860, to consider and decide what, if anything, ought to be done by said states, because of the success of the Republican Party in that presidential election, all the facts would be made known and secession defeated; so on October 5, 1860, Governor Gist, of South Carolina, sought by letters to induce other Southern governors to favor *separate state* secession "in case Mr. Lincoln should receive a majority of the electoral vote." By him and others, South Carolina was "galloped" into secession by the 44th day after the November election. How the governor was aided in this is indicated by a circular from which I now quote.

November 19, 1860.
Executive Chamber of the 1860 Association.

The North is preparing to soothe and conciliate the South by disclaimers and overtures. The success of this policy would be disastrous to the cause of Southern union and independence, and it is necessary to resist and defeat it.

(Signed) ROBERT N. GOURDIN,
Chairman of the Executive Committee.

While the Confederate government was considering what action it should take as to Fort Sumter, an active,

uncompromising secessionist said to President Davis and his Cabinet,—

"Unless you sprinkle blood in the face of the people of Alabama, they will be back in the old union within ten days." See Nicolay and Hay's "Lincoln," Volume IV, page 45.

Every means calculated to excite the Southern people, to make them believe that they had been and would be outraged and wronged, and to induce them to hastily convene conventions to pass acts of secession, without giving time for investigation, consideration, and conference, was resorted to without scruple, and was successful.

The final verdict of well-informed, impartial history will prefix to the name of the attempted revolution of the South the adjectives "inexcusable," "unjustifiable." The result of the war of 1861–65 seemed to prove that God so judged.

The Facts that controlled the End

I append to my "Answer" the final, controlling facts which saved the Union.

On March 16, 1861, in a labored speech in the Senate, Senator Douglas told to President Lincoln and to the people that the Northern Democracy were not *then* ready for a use of force to maintain the national government.

On April 4, 1861, President Lincoln in council said that that government could only be maintained by the united efforts of the people of the loyal states; that if the rulers of secession should attack Fort Sumter in order to prevent the provisioning of its garrison of 83 soldiers and 40 workmen, an awakened and united

North would save the country; and therefore he ordered Captain Fox to make the attempt to provision the Fort.

On April 14, 1861, Senator Douglas, at the White House, told the president that a united North were, heart and soul, with him. On April 15, 1861, that North, with enthusiasm, obeyed his call; and the nation was safe. See Nicolay and Hay's "Lincoln," Volume IV, pages 27 and 28.

A careful study of what was done in states and nation from 1850 to July, 1861, forced me to think that the action of the South, beginning with the repeal of the Compromise of 1820, in May, 1854, and ending with the attempted secession of Virginia, North Carolina, Tennessee, and Arkansas, in April, May, and June, 1861, was amazingly unwise; and that, as the counsels of Ahithophel were, by Divine Power, overruled so that Absalom's rebellion failed, so those of able Southern statesmen were, by the same Power, so overruled that slavery in our country was made unlawful.


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